

REMARKS

Claims 30-59 are pending. At Applicants' request, the Office has reopened prosecution and examined claims 30-59. The Office finds that claims 30-33 are allowed and that claims 43-59 would be allowable if rewritten in independent form. Office Action, page 8. Applicants have amended claims 30-33 to clarify the invention of these claims. Claims 34-42 are rejected under one or more of 35 U.S.C. §§ 102 and 103. Applicants address each of these rejections below, according to their statutory origin.

Anticipation Rejections

The Office rejects claims 34-36, 38-40, and 42 under 35 U.S.C. §102(b) in light of Rajagopal et al. (*J. Photochem. Photobiol. A: Chem* 69:83-89 (1992)). According to the Office, Rajagopal teaches a method for detecting an analyte where the analyte is the solvent, comprising the steps of claim 34. Office Action, pages 2 and 3. The Office cites Table 2, Table 3, and page 83, column 2 of Rajagopal for alleged support. Regarding claims 35, 36, 38, and 39, the Office believes this reference teaches phenol, benzene, carboxylic acid, and carboxylate moieties in Table 2. Office Action, page 3. For claims 40 and 42, Rajagopal allegedly teaches in Table 3 an ECL reagent with Ruthenium 4-alkyl, 4'-methyl-2,2'-bipyridine. Office Action, page 3. Applicants traverse, addressing this rejection with respect to independent claim 34 for the following reason.

Rajagopal does not teach a method in which an ECL emission is generated. Rejected claim 34 describes the generation of an "observed ECL emission" and a "reduced ECL emission." In contrast, Rajagopal measured fluorescence, not electrochemiluminescence. See page 83, right column of this reference, which instructs that "steady state luminescence measurements were carried out using a JASCO FP 770 spectrofluorometer." A spectrofluorometer measures fluorescence, not

electrochemiluminescence. Moreover, because Rajagopal does not teach the measurement of an ECL emission, this reference cannot teach the detection of a difference between the observed ECL emission and the reduced ECL emission, as recited in step (b) of claim 34.

Because Rajagopal does not teach these elements of independent claim 34, this reference cannot anticipate this claim or its rejected dependent claims. Applicants request that the Office withdraw its rejection of claims 34-36, 38-40, and 42 accordingly.

Claims 34-36, 38-40, and 42 stand rejected under 35 U.S.C. §102(b) in light of Vera et al. (*J. Photochem. Photobiol. A: Chem* 76:13-19 (1993)). Office Action, page 4. According to the Office, Vera teaches a method for detecting an analyte where the analyte is a pH solution, comprising the steps of claim 34. Office Action, pages 4-5. The Office cites Table 1 and page 13, column 2 for alleged support. *Id.* Regarding claims 35, 36, 38, and 39, the Office believes this reference teaches phenol, benzene, carboxylic acid, and carboxylate moieties in Table 1. Office Action, page 5. For claims 40 and 42, Vera allegedly teaches in Table 1 an ECL reagent with Ruthenium bipyridine. *Id.* Applicants traverse, addressing this rejection with respect to independent claim 34.

Just as with Rajagopal, Vera measured fluorescence, not electrochemiluminescence. At page 14, left column, the Vera reference notes that “[f]luorescence lifetime measurements were performed with a nitrogen laser . . . as an excitation source” (emphasis added) and that a “Shimadzu UV-140-02 spectrophotometer was used to measure absorption spectra.” A spectrophotometer measures fluorescence, not electrochemiluminescence. Because the experiments described in Vera measure fluorescence rather than electrochemiluminescence, Vera

does not anticipate claim 34 or its dependent claims for the same reasons discussed above regarding Rajagopal. Applicants request that this rejection be withdrawn.

The Office rejects claims 34, 35, 37, 40, and 42 under 35 U.S.C. §102(b) in light of Kuzmin et al. (*J. Photochem. Photobiol. A: Chem* 87:43-54 (1995)). The Office believes that Kuzmin teaches a method for detecting an analyte, where SDS micelles and micelle concentrations are the analyte, comprising the steps of claim 34. Office Action, pages 5-6. The Office cites the abstract, Figure 1, Figure 3, and Table 1 for alleged support. *Id.* For claims 35 and 37, the Office believes that this reference teaches quinone moieties in Table 1. Office Action, page 6. Regarding claims 40 and 42, Kuzmin allegedly teaches in Table 1 and the abstract an ECL reagent with Ruthenium bipyridine. *Id.* Applicants traverse, addressing this rejection with respect to independent claim 34.

Like the first two references cited against claim 34, so too does Kuzmin measure fluorescence instead of electrochemiluminescence. At page 44, right column, Kuzmin notes that a "spectrophotometer and a . . . spectrofluorometer were used for stationary measurements. *Fluorescence* lifetimes were determined with a time-correlated, single-photon-counting instrument . . ." (emphasis added). Kuzmin uses devices that measure fluorescence and states that the signal detected was fluorescence, not electrochemiluminescence. Thus, Kuzmin does not teach the measurement of an ECL emission nor does Kuzmin teach the detection of a difference between the observed ECL emission and the reduced ECL emission, as recited in step (b) of claim 34. Because Kuzmin does not teach these elements of claim 34, this reference cannot anticipate claims 34, 35, 37, 40, and 42. Applicants request that this rejection be withdrawn.

Obviousness Rejection

The Office rejects claim 41 as allegedly obvious in light of Kuzmin. The Office believes that Kuzmin teaches a method for detecting an analyte where the analyte is the solvent, comprising the steps of claim 34. The Office asserts that Kuzmin also allegedly teaches that ruthenium and osmium were known equivalents and concludes that it would be obvious to substitute osmium for ruthenium since the reference allegedly teaches that they are equivalents.

For the reasons discussed above, Kuzmin does not teach the assay of independent claim 34. As such, Kuzmin cannot render obvious dependent claim 41, regardless of whether or not Kuzmin teaches the alleged equivalence of ruthenium and osmium. Applicants therefore request that the Office withdraw this rejection of claim 41.

Conclusions

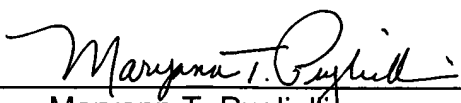
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of pending claims 30-59.

Please also grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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